

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHNNY LEE BROWN, #212271,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:14-CV-899-MHT
)	(WO)
)	
WARDEN CROW, et al.,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

I. INTRODUCTION

This 42 U.S.C. § 1983 action is pending before the court on an amended complaint filed by Johnny Lee Brown (“Brown”), an indigent state inmate, challenging conditions of confinement at the Draper Correctional Facility (“Draper”). Specifically, Brown presents general allegations with respect to a drainage problem in the facility’s toilet areas, leaks in its ceilings, an absence of smoke detectors and inadequate ventilation. *Amended Complaint - Doc No. 5* at 3.¹ Brown also challenges conditions present on the farm squad alleging that: (i) This work detail is “illegal” because correctional officers assigned to provide security for the squad are armed with shotguns; (2) He is required to work in extreme heat; and (3) He is denied access to water/ice while on this work detail.

¹All documents and attendant page numbers cited herein are those assigned by the Clerk of this court in the docketing process.

Id. Finally, Brown references actions taken against other inmates who refuse to check out for work on the farm squad. *Id.*

Based on the nature of the claims presented in the amended complaint, the court entered orders requiring that Brown file an amendment to his amended complaint with respect to whether he had ever refused to check out on the farm squad and, if so, the dates of the refusals and actions taken against him. *Order of September 5, 2014 - Doc. No. 6.* Brown, however, filed no response to this order. The court therefore entered an order that on or before November 3, 2014 Brown show cause for such failure and likewise file the requisite amendment to the complaint. *Order of October 20, 2014 - Doc. No. 7.* The court further cautioned Brown that his failure to file a response to this order would result in “this case proceed[ing] only on those claims relative to actions and conditions to which he has himself been subjected, i.e., inadequate drainage of toilets, conditions of the farm squad, lack of smoke detectors, . . . and inadequate ventilation [within the facility].” *Id.*

Brown filed no response to either of the orders directing him to file an amendment to the amended complaint. Thus, this case is proceeding only on those claims challenging the physical conditions at Draper with respect to toilet drainage, smoke detectors, ventilation and conditions of the farm squad, i.e., the presence of armed guards, the temperatures endured and the availability of water/ice to inmates while in the field. *Order of November 7, 2014 - Doc. No. 8* at 2.² Brown names Warden John Crow,

²In addition, as noted in the order requiring that Brown file an amended complaint (Doc. No. 4), Brown lacks standing to proceed on any claims regarding actions taken against other inmates who refused to check out for work

Warden Louis Boyd, Sgt. Jackie Pettway, Sgt. Kendrick Boyd and Lt. Michael Winters, employees of Draper at the time relevant to the complaint, and Kim Thomas, Commissioner of the Alabama Department of Corrections during the relevant period of time, as defendants in this cause of action.³ Brown seeks a declaratory judgment, injunctive relief and monetary compensation. *Amended Complaint - Doc. No. 5* at 4.

The defendants filed a special report and relevant evidentiary materials in support of their report, including affidavits, addressing the claims presented by Brown. In these filings, the defendants deny that the conditions about which Brown complains violated his constitutional rights.

The court issued an order directing Brown to file a response, supported by affidavits or statements made under penalty of perjury and other evidentiary materials, to the arguments set forth by the defendants in their report. *Order of February 6, 2017 - Doc. No. 18* at 2. The order specifically cautioned the parties that “**unless within fifteen**

on the farm squad. *McGowan v. Maryland*, 366 U.S. 420, 429 (1961), citing *United States v. Raines*, 362 U.S. 17, 22 (1960) (“[A] litigant may only assert his own constitutional rights or immunities.”); *Myers v. Loudoun Cty. Pub. Sch.*, 418 F.3d 395, 400 (4th Cir. 2005) (“An individual unquestionably has the right to litigate his own claims in federal court[.] . . . The right to litigate for oneself, however, does not create a coordinate right to litigate for others. See *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975) (holding that a pro se prisoner may not litigate the interests of other prisoners in class action).”).

³Upon a liberal construction of the amended complaint, the court construes it to present claims against the defendants in both their individual and official capacities. “[W]hen officials sued in [their official] capacity in federal court die or leave office, their successors automatically assume their roles in the litigation.” *Hafer v. Melo*, 502 U.S. 21, 25, 112 S. Ct. 358, 116 L. Ed. 2d 301 (1991). Thus, with respect to Brown’s claims against former commissioner Thomas in his official capacity, current commissioner Jefferson Dunn is the appropriate defendant. As to the personal or individual capacity claims lodged against defendant Thomas, Thomas remains a proper defendant. *Walton ex rel. R.W. v. Montgomery County Bd. of Educ.*, 371 F. Supp. 2d 1318, 1320 n.1 (M.D. Ala. 2005) (new official substituted for official capacity claim but not for individual capacity claim).

(15) days from the date of this order a party files a response in opposition which presents sufficient legal cause why such action should not be undertaken . . . the court may at any time [after expiration of the time for the plaintiff filing a response to the order] and **without further notice to the parties (1) treat the special report and any supporting evidentiary materials as a motion for summary judgment and (2) after considering any response as allowed by this order, rule on the motion for summary judgment in accordance with the law.”** *Id.* at 2-3.⁴ Brown filed no response to this order.

Pursuant to the order directing a response from the plaintiff, the court deems it appropriate to treat the defendants’ report as a motion for summary judgment. Upon consideration of the defendants’ motion for summary judgment, the evidentiary materials filed in support thereof and the sworn complaint, the court concludes that summary judgment is due to be granted in favor of the defendants.

II. SUMMARY JUDGMENT STANDARD

“Summary judgment is appropriate ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine [dispute] as to any material fact and that the moving party is entitled to judgment as a matter of law.’” *Greenberg v. BellSouth Telecomm., Inc.*, 498 F.3d 1258, 1263 (11th Cir. 2007) (per curiam) (citation to former rule omitted); Fed.R.Civ.P. Rule 56(a) (“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter

⁴The docket indicates that Brown received a copy of this order.

of law.”).⁵ The party moving for summary judgment “always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the [record, including pleadings, discovery materials and affidavits], which it believes demonstrate the absence of a genuine [now dispute] of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Williamson Oil Company, Inc. v. Phillip Morris USA*, 346 F.3d 1287, 1298 (11th Cir. 2003) (moving party bears the initial burden of establishing there is no genuine dispute as to any material fact); *Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590, 593 (11th Cir. 1995) (same). The movant may meet this burden by presenting evidence indicating there is no dispute of material fact or by demonstrating that the nonmoving party has failed to present appropriate evidence in support of some element of its case on which it bears the ultimate burden of proof. *Celotex*, 477 U.S. at 322-324; *Moton v. Cowart*, 631 F.3d 1337, 1341 (11th Cir. 2011) (the moving party discharges his burden by showing that the record lacks evidence to support the nonmoving party’s case or that the nonmoving party would be unable to prove his case at trial).

The defendants have met their evidentiary burden. The burden therefore shifts to the plaintiff to establish, with appropriate evidence beyond the pleadings, that a genuine

⁵Effective December 1, 2010, Rule 56 was “revised to improve the procedures for presenting and deciding summary-judgment motions.” Fed.R.Civ.P. 56 Advisory Committee Notes. Under this revision, “[s]ubdivision (a) carries forward the summary-judgment standard expressed in former subdivision (c), changing only one word -- genuine ‘issue’ becomes genuine ‘dispute.’ ‘Dispute’ better reflects the focus of a summary-judgment determination.” *Id.* “‘Shall’ is also restored to express the direction to grant summary judgment.” *Id.* Despite these stylistic changes, the substance of Rule 56 remains the same and, therefore, all cases citing prior versions of the rule remain equally applicable to the current rule.

dispute material to his case exists. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991); *Celotex*, 477 U.S. at 324; Fed.R.Civ.P. 56(e)(3) (“If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact by [citing to materials in the record including affidavits, relevant documents or other materials] the court may . . . grant summary judgment if the motion and supporting materials -- including the facts considered undisputed -- show that the movant is entitled to it.”); *Jeffery*, 64 F.3d at 593-594 (internal quotation marks omitted) (Once the moving party meets its burden, “the non-moving party must then go beyond the pleadings, and by its own affidavits [or sworn statements], or by depositions, answers to interrogatories, and admissions on file,” demonstrate that there is a genuine dispute of material fact.). This court will also consider “specific facts” pled in a plaintiff’s sworn complaint when considering his opposition to summary judgment. *Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1098 (11th Cir. 2014). A genuine dispute of material fact exists when the nonmoving party produces evidence that would allow a reasonable fact-finder to return a verdict in its favor. *Greenberg*, 498 F.3d at 1263; *Allen v. Bd. of Public Education for Bibb County*, 495 F.3d 1306, 1313 (11th Cir. 2007). In civil actions filed by inmates, federal courts

must distinguish between evidence of disputed facts and disputed matters of professional judgment. In respect to the latter, our inferences must accord deference to the views of prison authorities. Unless a prisoner can point to sufficient evidence regarding such issues of judgment to allow him to prevail on the merits, he cannot prevail at the summary judgment stage.

Beard v. Banks, 548 U.S. 521, 530, 126 S.Ct. 2572, 2578, 165 L.Ed.2d 697 (2006) (internal citation omitted).

To proceed beyond the summary judgment stage, an inmate-plaintiff is required to produce “sufficient [favorable] evidence” which would be admissible at trial supporting his claims of constitutional violations. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); Rule 56(e), *Federal Rules of Civil Procedure*. “If the evidence [on which the nonmoving party relies] is merely colorable . . . or is not significantly probative . . . summary judgment may be granted.” *Anderson*, 477 U.S. at 249-250. “A mere ‘scintilla’ of evidence supporting the opposing party’s position will not suffice; there must be enough of a showing that the [trier of fact] could reasonably find for that party. *Anderson v. Liberty Lobby*, 477 U.S. 242, 106 S.Ct. 2505, 2512, 91 L.Ed.2d 202 (1986).” *Walker v. Darby*, 911 F.2d 1573, 1576-1577 (11th Cir. 1990). Conclusory allegations based on subjective beliefs are likewise insufficient to create a genuine dispute of material fact and, therefore, do not suffice to oppose a motion for summary judgment. *Holifield v. Reno*, 115 F.3d 1555, 1564 n.6 (11th Cir. 1997) (A plaintiff’s “conclusory assertions . . ., in the absence of [admissible] supporting evidence, are insufficient to withstand summary judgment.”); *Harris v. Ostrout*, 65 F.3d 912, 916 (11th Cir. 1995) (grant of summary judgment appropriate where inmate produces nothing beyond “his own conclusory allegations” challenging actions of the defendants); *Fullman v. Graddick*, 739 F.2d 553, 557 (11th Cir. 1984) (“Mere verification of party’s own conclusory allegations is not sufficient to oppose summary judgment.”); *Evers v. General Motors*

Corp., 770 F.2d 984, 986 (11th Cir. 1985) (“[C]onclusory allegations without specific supporting facts have no probative value.”). Hence, when a plaintiff fails to set forth specific facts supported by requisite evidence sufficient to establish the existence of an element essential to his case and on which the plaintiff will bear the burden of proof at trial, summary judgment is due to be granted in favor of the moving party. *Celotex*, 477 U.S. at 322 (“[F]ailure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.”); *Barnes v. Southwest Forest Industries, Inc.*, 814 F.2d 607, 609 (11th Cir. 1987) (If on any part of the prima facie case the plaintiff presents insufficient evidence to require submission of the case to the trier of fact, granting of summary judgment is appropriate.); *Chapman v. AI Transport*, 229 F.3d 1012, 1023 (11th Cir. 2000) (en banc) (summary judgment appropriate where no genuine dispute of material fact exists). At the summary judgment stage, this court must “consider all evidence in the record . . . [including] pleadings, depositions, interrogatories, affidavits, etc. -- and can only grant summary judgment if everything in the record demonstrates that no genuine [dispute] of material fact exists.” *Strickland v. Norfolk Southern Railway Co.*, 692 F.3d 1151, 1154 (11th Cir. 2012).

For summary judgment purposes, only disputes involving material facts are relevant. *United States v. One Piece of Real Property Located at 5800 SW 74th Avenue, Miami, Florida*, 363 F.3d 1099, 1101 (11th Cir. 2004). What is material is determined by the substantive law applicable to the case. *Liberty Lobby*, 477 U.S. at 248; *Lofton v. Secretary of the Department of Children and Family Services*, 358 F.3d 804, 809 (11th

Cir. 2004) (“Only factual disputes that are material under the substantive law governing the case will preclude entry of summary judgment.”). “The mere existence of some factual dispute will not defeat summary judgment unless that factual dispute is material to an issue affecting the outcome of the case.” *McCormick v. City of Fort Lauderdale*, 333 F.3d 1234, 1243 (11th Cir. 2003) (citation omitted). “[T]here must exist a conflict in substantial evidence to pose a jury question.” *Hall v. Sunjoy Indus. Group, Inc.*, 764 F.Supp.2d 1297, 1301 (M.D. Fla. 2011) (citing *Liberty Lobby, supra*).

To demonstrate a genuine dispute of material fact, the party opposing summary judgment “must do more than simply show that there is some metaphysical doubt as to the material facts. . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine [dispute] for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In cases where the evidence before the court which is admissible on its face or which can be reduced to admissible form indicates there is no genuine dispute of material fact and the party moving for summary judgment is entitled to it as a matter of law, summary judgment is proper. *Celotex*, 477 U.S. at 323-324 (summary judgment appropriate where pleadings, evidentiary materials and affidavits before the court show no genuine dispute as to a requisite material fact); *Waddell v. Valley Forge Dental Associates, Inc.*, 276 F.3d 1275, 1279 (11th Cir. 2001) (To establish a genuine dispute of material fact, the nonmoving party must produce evidence such that a reasonable trier of fact could return a verdict in his favor.). “When opposing parties tell two different stories, one of which is blatantly

contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007).

Although factual inferences must be viewed in a light most favorable to the nonmoving party and *pro se* complaints are entitled to liberal interpretation, a *pro se* litigant does not escape the burden of establishing by sufficient evidence a genuine dispute of material fact. *Beard*, 548 U.S. at 525, 126 S.Ct. at 2576; *Brown v. Crawford*, 906 F.2d 667, 670 (11th Cir. 1990). Thus, the plaintiff’s *pro se* status alone does not mandate this court’s disregard of elementary principles of production and proof in a civil case.

The court has undertaken a thorough and exhaustive review of all the evidence contained in the record. After such review, the court finds that Brown has failed to demonstrate a genuine dispute of material fact in order to preclude entry of summary judgment in favor of the defendants.

III. ABSOLUTE IMMUNITY

To the extent Brown lodges claims against the defendants in their official capacities and seeks monetary damages, the defendants are entitled to absolute immunity. Official capacity lawsuits are “in all respects other than name, . . . treated as a suit against the entity.” *Kentucky v. Graham*, 473 U. S. 159, 166 (1985). “A state official may not be sued in his official capacity unless the state has waived its Eleventh Amendment immunity, *see Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 100, 104

S.Ct. 900, 908, 79 L.Ed.2d 67 (1984), or Congress has abrogated the state's immunity, *see Seminole Tribe v. Florida*, [517 U.S. 44, 59], 116 S.Ct. 1114, 1125, 134 L.Ed.2d 252 (1996). Alabama has not waived its Eleventh Amendment immunity, *see Carr v. City of Florence*, 916 F.2d 1521, 1525 (11th Cir. 1990) (citations omitted), and Congress has not abrogated Alabama's immunity. Therefore, Alabama state officials are immune from claims brought against them in their official capacities." *Lancaster v. Monroe County*, 116 F.3d 1419, 1429 (11th Cir. 1997).

In light of the foregoing, the defendants are entitled to sovereign immunity under the Eleventh Amendment for claims seeking monetary damages from them in their official capacities. *Lancaster*, 116 F.3d at 1429; *Harbert Int'l, Inc. v. James*, 157 F.3d 1271, 1277 (11th Cir. 1998) (state officials sued in their official capacities are protected from suit for damages under the Eleventh Amendment); *Edwards v. Wallace Community College*, 49 F.3d 1517, 1524 (11th Cir. 1995) (damages are unavailable from state official sued in his official capacity).

IV. DISCUSSION

Brown alleges that during his incarceration at Draper he has been subjected to unconstitutional conditions. The challenged conditions include lack of proper drainage and urine on the floor of the restrooms, no smoke detectors in the facility and inadequate ventilation. *Amended Complaint - Doc. No. 5* at 3. Brown also complains that while on the farm squad he is forced to work in excessive heat without access to water or ice under the supervision of armed guards. *Id.* at 3. The correctional defendants deny that the

conditions made the basis of the instant complaint violated the Constitution. Warden

Louis Boyd addresses Brown's claims, in pertinent part, as follows:

Inmate Brown alleges cruel and unusual punishment in regards to drainage backing up in [the] bathroom with urine all over the floor at all times.

Draper Correctional Facility (Draper CF) maintains a Maintenance Division. One of their responsibilities is to make repairs in dormitories on a daily basis. When drains are clogged because of inmate abuse, i.e., rags, sheets, cell phones [placed in the toilets, or for other reasons] the maintenance workers will unclog the drains to ensure proper drainage. This type of incident happens frequently, with maintenance making daily checks of each and every dormitory.

Inmate Brown makes [a] claim of being assigned to an "illegal" farm squad with two (2) correctional officers who guard[] over him and others with shotguns. He also claims he is forced to work in 100 degree heat with no water or ice. . . .

Draper CF does have farm squads consisting of medium custody inmates who are supervised by armed correctional officers. Prior to checking out any farm squad, the officers have two (2) water coolers of ice and water/gator aide for each squad that checks out for work. . . . Inmates will receive disciplinary action for refusing to work. According to Standard Operating Procedure if the heat index rises above 102 degrees, all inmates will be checked back into the facility

Inmate Brown claims that there are no smoke detectors in the building as well as no ventilation at all.

Draper CF has smoke detectors in some areas of the institution, along with three (3) rooftop vents to pull air out, exhaust fans in all bathrooms, four (4) box fans and four (4) circulation fans in each dormitory.

Defs.' Ex. B - Doc. No. 17-2 at 1-2.

In his affidavit, Warden John Crow states that:

There is no dorm or area at Draper where there is urine all over the floor or where the drainage is [always] backing up. However, it should be noted that there are occasional plumbing problems where inmates in the dorms intentionally break items in the restrooms or normal maintenance

problems but they are repaired in a timely manner (usually within an hour or so in most cases).

There are Farm Squads in operation at Draper. Depending on the custody level of the inmates on the squad, there may indeed be (2) two armed Correctional Officers supervising them. The Farm Squads do operate during the summer months, however they have iced water with them and are even supplemented with Gator Aid in the summer months. These squads do not operate during extreme heat.

There are some smoke detectors at Draper. There is ventilation throughout the facility. The dorms are not air conditioned, but they are ventilated to ensure the most comfortable temperature possible with stationary fans, exhaust fans, and numerous windows on both sides of the dorms that open.

Defs.’ Ex. C - Doc. No. 17-3 at 2; see also Defs.’ Ex. D (Aff. of Sgt. Jackie Pettway) - Doc. No. 17-4 at 1 (stating that inmates on the farm squad are permitted breaks during which they have access to coolers filled with ice and water or Gatorade).

Only actions which deny inmates “the minimal civilized measure of life’s necessities” are grave enough to establish constitutional violations. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). The Eighth Amendment proscribes those conditions of confinement which involve the wanton and unnecessary infliction of pain. *Id.* at 346. Specifically, it is concerned with “deprivations of essential food, medical care, or sanitation” or “other conditions intolerable for prison confinement.” *Id.* at 348 (citation omitted). Prison conditions which may be “restrictive and even harsh, [] are part of the penalty that criminal offenders pay for their offenses against society” and, therefore, do not necessarily constitute cruel and unusual punishment within the meaning of the Eighth Amendment. *Id.* Conditions, however, may not be “barbarous” nor may they contravene society’s “evolving standards of decency.” *Id.* at 345-346. “[T]he Constitution does not

mandate comfortable prisons.’ *Id.* at 349, 101 S.Ct. at 2400. If prison conditions are merely ‘restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.’ *Id.* at 347, 101 S.Ct. at 2399. Generally speaking, prison conditions rise to the level of an Eighth Amendment violation only when they ‘involve the wanton and unnecessary infliction of pain.’ *Id.*” *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004). Although the Constitution “does not mandate comfortable prisons . . . neither does it permit inhumane ones.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Rhodes*, 452 U.S. at 349). Thus, it is well-settled that the conditions under which a prisoner is confined are subject to constitutional scrutiny. *Helling v. McKinney*, 509 U.S. 25 (1993).

A prison official has a duty under the Eighth Amendment to “provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must ‘take reasonable measures to guarantee the safety of the inmates.’” *Farmer*, 511 U.S. at 832 (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-527 (1984)); *Helling*, 509 U.S. at 31-32. For liability to attach, the challenged prison condition must be “extreme” and must pose “an unreasonable risk of serious damage to [the inmate’s] future health.” *Crosby*, 379 F.3d at 1289-1290. To demonstrate an Eighth Amendment violation regarding conditions of confinement, a prisoner must satisfy both an objective and a subjective inquiry. *Farmer*, 511 U.S. at 834. In *Farmer*, the Court identified both objective and subjective elements necessary to establish an Eighth Amendment violation. With respect to the requisite

objective elements, an inmate must first show “an objectively substantial risk of serious harm . . . exist[ed]. Second, once it is established that the official is aware of this substantial risk, the official must react to this risk in an objectively unreasonable manner.” *Marsh*, 268 F.3d 1028-1029. As to the subjective elements, “the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. . . . The Eighth Amendment does not outlaw cruel and unusual ‘conditions’; it outlaws cruel and unusual ‘punishments.’ . . . [A]n official’s failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.” *Farmer*, 511 U.S. at 837-838; *Campbell v. Sikes*, 169 F.3d 1353, 1364 (11th Cir. 1999) (citing *Farmer*, 511 U.S. at 838) (“Proof that the defendant should have perceived the risk, but did not, is insufficient.”); *Cottrell v. Caldwell*, 85 F.3d 1480, 1491 (11th Cir. 1996) (same). The conduct at issue “must involve more than ordinary lack of due care for the prisoner’s interests or safety. . . . It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause, whether that conduct occurs in connection with establishing conditions of confinement, supplying medical needs, or restoring official control over a tumultuous cellblock.” *Whitley v. Albers*, 475 U.S. 312, 319 (1986).

The living conditions within a correctional facility or conditions of work assignments will constitute cruel and unusual punishment when the conditions involve or

result in “wanton and unnecessary infliction of pain, [or] . . . [are] grossly disproportionate to the severity of the crime warranting imprisonment.” *Rhodes*, 452 U.S. at 347. “Conditions . . . alone or in combination, may deprive inmates of the minimal civilized measure of life’s necessities. Such conditions could be cruel and unusual under the contemporary standard of decency. . . . But conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional.” *Id.* at 347. To determine whether conditions of confinement constitute cruel and unusual punishment, the court must look to the effect the condition has upon the inmate. *Id.* at 366. In a case involving conditions of confinement generally or several different conditions, the court should consider whether the claims together amount to conditions which fall below constitutional standards. *Hamm v. De Kalb County*, 774 F.2d 1567 (11th Cir. 1985), *cert. denied Hamm v. De Kalb County*, 475 U.S. 1096, 106 S.Ct. 1492, 89 L. Ed. 2d 894 (1986); *see also Chandler v. Baird*, 926 F.2d 1057 (11th Cir. 1991). The court’s consideration of whether the totality of a plaintiff’s claims amount to conditions which fall below applicable constitutional standards is limited by the Supreme Court’s admonishment that “[s]ome conditions of confinement may establish an Eighth Amendment violation ‘in combination’ when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need. . . . To say that some prison conditions may interact in this fashion is a far cry from saying that all prison conditions are a seamless web for Eighth Amendment purposes. Nothing so amorphous as ‘overall conditions’ can rise to the level

of cruel and unusual punishment when no specific deprivation of a single human need exists.” *Wilson v. Seiter*, 501 U.S. 294, 304-305 (1991) (emphasis in original).

A prison official may likewise be held liable under the Eighth Amendment for acting with “‘deliberate indifference’” to an inmate’s health or safety when the official knows that the inmate faces “a substantial risk of serious harm” and disregards that risk by failing to take reasonable measures to abate it. *Farmer v. Brennan*, 511 U.S. 825, 828, 114 S.Ct. 1970, 1974 (1994).

To be deliberately indifferent, Defendants must have been “subjectively aware of the substantial risk of serious harm in order to have had a “‘sufficiently culpable state of mind.’”” *Farmer*, 511 U.S. at 834-38, 114 S.Ct. at 1977-80; *Wilson v. Seiter*, 501 U.S. 294, 299, 111 S.Ct. 2321, 2324-25, 115 L.Ed.2d 271 (1991). . . . Even assuming the existence of a serious risk of harm and legal causation, the prison official must be aware of specific facts from which an inference could be drawn that a substantial risk of serious harm exists - and the prison official must also “draw that inference.” *Farmer*, 511 U.S. at 837, 114 S.Ct. at 1979.

Carter v. Galloway, 352 F.3d 1346, 1349 (11th Cir. 2003). “The known risk of injury must be a strong likelihood, rather than a mere possibility before [the responsible official’s] failure to act can constitute deliberate indifference.” *Brown v. Hughes*, 894 F.2d 1533, 1537 (11th Cir. 1990) (citations and internal quotations omitted). As the foregoing makes clear, “[m]erely negligent failure to protect an inmate . . . does not justify liability under section 1983[.]” *Id.*

The undisputed evidentiary materials filed herein by the defendants demonstrate that: (i) Plumbing problems are addressed in a timely manner by the facility’s maintenance department; (ii) Smoke detectors are present in areas of Draper; (iii) Fans

and rooftop vents provide adequate ventilation; (iv) The farm squads operate during the summer months but not when the heat index exceeds 102 degrees; and (v) Officers provide water/Gatorade and ice for inmates who work on the farm squads. Despite Brown's conclusory allegations regarding the conditions present at Draper, he does not establish that the alleged unconstitutional conditions denied him the minimal civilized measure of life's necessities or subjected him to a wanton and unnecessary infliction of pain. *Wilson*, 501 U.S. at 298-299; *Rhodes*, 452 U.S. at 347. The conditions referenced by Brown, though uncomfortable, inconvenient, unpleasant and/or objectionable, were not so extreme as to violate the Constitution. *See Baird*, 926 F.2d at 1289. Furthermore, Brown fails to demonstrate deliberate indifference or reckless disregard by the defendants with respect to his health or safety relative to these conditions. Specifically, he does not identify any particular condition of which the defendants were aware from which an inference could be drawn that a substantial risk of serious harm existed. The record is also devoid of any evidence showing that the defendants drew the requisite inference. Consequently, summary judgment is due to be granted in favor of the defendants on the plaintiff's claims attacking the conditions at Draper. *See McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999); *see also Carter*, 352 F.3d at 1349-1350.

V. CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. The defendants' motion for summary judgment be GRANTED.
2. Judgment be GRANTED in favor of the defendants.

3. This case be DISMISSED with prejudice.

4. The costs of this proceeding be taxed against the plaintiff.

It is further

ORDERED that on or before May 5, 2017 the parties may file objections to this Recommendation. A party must specifically identify the factual findings and legal conclusions in the Recommendation to which the objection is made; frivolous, conclusive, or general objections will not be considered.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar a party from a *de novo* determination by the District Court of factual findings and legal issues covered in the report and shall "waive the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions" except upon grounds of plain error if necessary in the interests of justice. 11TH Cir. R. 3-1; *see Resolution Trust Co. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989).

DONE this 18th day of April, 2017.

/s/Terry F. Moorner
TERRY F. MOORER
UNITED STATES MAGISTRATE JUDGE